

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

CARLOS MARTINEZ,
Plaintiff,

v.

SPACE EXPLORATION
TECHNOLOGIES CORP a/k/a SPACEX,
Defendant.

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Civil Action No.: 7:22-CV-208

NOTICE OF REMOVAL

COMES NOW Space Exploration Technologies Corp. (hereinafter referred to as “SpaceX”), Defendant in the above-styled and numbered civil action, and files this Notice of Removal¹ to the United States District Court for the Southern District of Texas, McAllen Division, respectfully showing as follows:

I. PLAINTIFF’S CLAIMS AND PROCEDURAL HISTORY

1. Plaintiff filed his Original Petition on or about May 31, 2022, in the 93rd Judicial District Court of Hidalgo County, Texas. Plaintiff’s Original Petition is styled *Carlos Martinez v. Space Exploration Technologies Corp a/k/a Space X*, Cause No. C-1996-22-B. Plaintiff, who is a

¹ On or about February 23, 2020, Plaintiff entered into an “Employee Arbitration and Dispute Resolution Agreement and Class Action Waiver” (the “Arbitration Agreement”), through which he agreed to resolve claims of employment discrimination, specifically including claims pursuant to the Age Discrimination in Employment Act, arising out of or related to his employment with Defendant or the termination of such employment pursuant to final and binding arbitration. Because the claims asserted by Plaintiff are subject to the terms of the parties’ Arbitration Agreement, Defendant files this Notice of Removal subject to a Motion to Compel Arbitration to be filed in the near future and without waiving Defendant’s right to compel such arbitration. Defendant’s intention to file such a Motion to Compel Arbitration was also noted in Defendant’s Original Answer. (*See* Ex. B-2 at 1 n.1 (Def.’s Orig. Ans.)). To that end, on June 29, 2022, Plaintiff’s counsel was provided with a copy of the Arbitration Agreement and asked, pursuant to Local Rule 7.1(D), whether Plaintiff opposed such a Motion. As of the date of this filing, Plaintiff’s counsel and the undersigned counsel are engaged in ongoing discussions regarding Plaintiff’s position with respect to Defendant’s Motion to Compel Arbitration.

former employee of SpaceX, claims discrimination on the basis of age and retaliation in alleged violation of the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621, *et seq.*²

2. SpaceX was served with process on June 7, 2022, via certified mail through its registered agent. SpaceX timely filed its Original Answer with the state court on June 21, 2022.

3. Pursuant to 28 U.S.C. § 1446(a), and Local Rule 81, the following documents are attached to this Notice:

- (a) All executed process in this case is attached as **Exhibit A**;
- (b) Pleadings and answers are attached as **Exhibit B**;
- (c) All orders signed by the state judge (none)
- (d) the state court’s docket sheet is attached as **Exhibit C**;
- (e) an index of matters being filed is attached as **Exhibit D**; and
- (f) a list of all counsel of record, including addresses, telephone numbers, and parties represented is attached as **Exhibit E**.

II. GROUNDS FOR REMOVAL: FEDERAL QUESTION JURISDICTION

4. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331,³ and the action may be removed pursuant to 28 U.S.C. § 1441(a), because Plaintiff alleges claims arising under federal law—specifically the ADEA. This civil action is properly removed to this Court because the state court where the action has been pending is located with this district and

² See Exhibit B-1, Plaintiff’s Original Petition, at ¶ 5. Plaintiff cites to 29 U.S.C. 12201 *et seq.* which Defendant presumes was in error, as no statute exists at that citation.

³ That this matter is properly removable to this Court based upon federal question jurisdiction is confirmed by Plaintiff’s Original Petition, which specifically alleges that “[t]his Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, in that this is a civil action arising under the ADEA.” (Ex. B-1 at 2 (Pl.’s Orig. Pet., Para. 4)).

division. *See* 28 U.S.C. § 124(b)(7) (specifying that Hidalgo County falls within the United States District Court for the Southern District of Texas, McAllen Division).

5. In his Petition, Plaintiff alleges that Defendant violated the ADEA by discriminating against Plaintiff due to his age (over 40). (*See* Ex. B-1, Pl.’s Orig. Pet., at 4-5). Moreover, Plaintiff asserts that Defendant retaliated against Plaintiff in violation of the ADEA when it “instituted a campaign of retaliation which included [sic].” (Ex. B-1, Pl.’s Orig. Pet., at 5 (Para. 31) (sentence unfinished in original)). These ADEA-based claims establish federal question jurisdiction in this Court. 28 U.S.C. §§ 1331.

III. THIS NOTICE OF REMOVAL IS TIMELY

6. Finally, SpaceX timely filed this Notice of Removal within 30 days of its receipt through service of process of a copy of the initial pleading establishing that this case is removable to this Court. 28 U.S.C. § 1446(b). Notice of this removal is being filed in the state court where the action is currently pending, and this Notice of Removal is also being served on Plaintiff through his counsel, pursuant to 28 U.S.C. § 1446(d). A copy of Defendant’s Notice of Removal to be filed in the state court is attached hereto as **Exhibit F**.

IV. PRAAYER

WHEREFORE, PREMISES CONSIDERED, Defendant Space Exploration Technologies Corp. hereby removes this matter from the District Court in Hidalgo County, Texas, to this Honorable Court.

DATED: June 30, 2022

Respectfully submitted,

DYKEMA GOSSETT PLLC

/s/ Ramon D. Bissmeyer

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**ATTORNEYS FOR DEFENDANT
SPACE EXPLORATION TECHNOLOGIES
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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following, and served it on the following counsel of record via email as indicated below:

Mr. Daniel E. Vargas
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/s/ Ramon D. Bissmeyer

Ramon D. Bissmeyer